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In The

Supreme Court of the United States

October Term, 1936

No. 32

IRON ROSS, as Receiver of the First National Bank of Perry, a corporation under the National Banking Laws,

Petitioner,

v.

W. V. KNOTT, as Treasurer of the State of Florida, W. V. KNOTT, Treasurer of the State of Florida, as ex officio County Treasurer of Taylor County, Florida, etc., et al.,

Respondents.

Brief of Respondents in Opposition to Petition for Writ of Certiorari

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No. 911

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Petitioner,

v.

W. V. KNOTT, as Treasurer of the State of Florida, W. V. KNOTT, Treasurer of the State of Florida, as ex officio County Treasurer of Taylor County, Florida, etc., et al.,

Respondents.

Brief of Respondents in Opposition to Petition for Writ of Certiorari

I.
OPINIONS OF THE COURTS BELOW

The opinion and order of the District Court appear at pages 44 and 50 of the printed record, and are reported in 13 F. Supp. 963. The opinion of the Circuit Court of Appeals appears in the record at page 69, and is reported in 87 F. (2d) 817.

II.
STATEMENT

We prefer to restate the facts.

In the latter part of 1929 and early part of 1930, and

NOTE: Any emphasis appearing in this brief is supplied.

as shown in part by receipt dated May 2, 1930, appearing as Exhibit 3 to the bill of complaint (R. 25), assets of the First National Bank of Perry, Florida, were delivered to the Bond Trustees of Taylor County, Florida, as security for the safekeeping and prompt payment of public funds of the county. As shown by the receipt which was, by reference, made part of the bill of complaint (R. 8, 25), these assets were *conditionally* redelivered to the bank, to be by it held in trust and segregated. This collateral was "to be released to the bank only by and with the consent of said Board of Bond Trustees, their successors, or assigns, *so long as said funds remain on deposit*" (R. 25). Upon the passage of Chapter 14486, Laws of Florida, Acts of 1929, which created a State Board of Administration to administer the interest and sinking funds of county road and bridge bonded indebtedness and supplementary revenues made available by law, the Bond Trustees, acting pursuant to Section 3 of said act, assigned the collateral to W. V. Knott, State Treasurer, as County Treasurer ex-officio.

On March 12, and March 15, 1930, respectively, other collateral was delivered to the State Treasurer, as County Treasurer ex-officio, to secure any deposits (R. 7, 23) (R. 7, 24) made, or to be made, in said capacity. This collateral was continuously held by him.

In late October, 1930, the bank closed and Ross, the petitioner here, was appointed Receiver. He thereupon delivered some of the collateral so conditionally left with the bank, to said Knott; collected upon a portion of the remainder, remitting the proceeds thereof for application on unpaid balances of such deposits; and retained an uncollected portion, never questioning the terms of the receipt under which the collateral was held segregated and in trust by the bank.

More than five years after the bank closed, Ross, as Receiver, on December 11, 1935, at the direction of the Comptroller of the Currency, filed bill of complaint (R. 1-29), attacking in general the right of defendants to assert any claim against the collateral as security for unpaid balances of public funds of Taylor County on hand with the bank when it closed. The prayer of the bill appears at pages 19 to 22 of the printed record.

Motions to dismiss the bill of complaint were separately filed by Taylor County (R. 30) and by the remaining defendants (R. 32). Thereafter, by leave of Court and before hearing, additional grounds of their motion to dismiss, together with supplemental motions to dismiss parts of the bill, were filed by the last named defendants (R. 35).

In an opinion rendered February 29, 1936 (R. 44) and reported in 13 F. Supp. 963, the District Judge held that the bill of complaint was without equity, since State banks in Florida were at all times authorized to give such security; the agreements were continuing ones; any obstacle to giving effect to the intention of the parties was removed by the Act of June 25, 1930, amending the National Banking Act; from that day to the closing of the bank in late October, no attempt was made by the bank to reclaim the collateral, although the State law in effect required, and the Federal law then authorized, security to be given. Accordingly, it was held that the collateral stood as security for unpaid balances of such deposits remaining with the bank after the amendment and on hand when it closed. Consequently, decree was entered dismissing the bill (R. 50). The Receiver prosecuted his appeal to the Circuit Court of Appeals, which affirmed the decree of the lower Court, the opinion appearing at pages 69, *et seq.* of the printed record, and

being reported in 87 F. (2d) 817. The Receiver has filed petition for writ of certiorari in this Court.

III.
THE QUESTION PRESENTED

We submit that the question presented is not whether the Act of June 25, 1930, was retroactive in effect; but, rather, whether under the circumstances stated the discretion of the two lower Courts in holding that it was inequitable to allow rescission should be disturbed, it appearing that the obstacle to giving effect to the intention of the parties was removed by the Act of 1930, and that the liens asserted were only as to balances of deposits remaining with the bank when it closed in late October of 1930.

IV.
ARGUMENT

The Act of June 25, 1930, provided:

> "Any assoication may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safekeeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the State in which such association is located, in the case of other banking institutions in the State."
>
> c. 604, 46 Stat. at L. 809, 12 U. S. C. 90.

It has been admitted throughout that State banks in Florida were at all times authorized to give security of the kind in question.

See

First American Bank & Trust Co. v. Palm Beach, 96 Fla. 247, 117 So. 900, 65 A. L. R. 1398;
Davis v. Knott, 109 Fla. 60, 147 So. 276.

This Court has spoken three times relative to the Act of 1930.

Texas & Pacific Railroad Co. v. Pottorff, 291 U. S. 245, 78 L. Ed. 777;

City of Marion v. Sneeden, 291 U. S. 262, 78 L. Ed. 787;

Lewis v. Fidelity & Deposit Co., 292 U. S. 559, 78 L. Ed. 1425.

In only one of the cases had there been any change in the existing law as to the bank's authority. In both the *Marion* and *Pottorff* cases the type of action originally ultra vires remained so because the amendment conferred no new authority. In the *Lewis* case a change was wrought in the corporate authority by the amendment. In that case the Court gave effect to the intention of the parties from the effective date of the amendment. Cases such as

Smith v. B. & O. R. R. Co. (D. C. W. D. Pa.), 48 F. (2d) 861;

B. & O. R. Co. v. Smith (C. C. A. 3), 56 F. (2d) 799;

Texas & P. R. Co. v. Pottorff, 291 U. S. 245, 78 L. Ed. 777;

Griffin v. Royall (C. C. A. 4), 70 F. (2d) 103;

Eckerson v. Utter (D. C. Idaho), 7 F. Supp. 201;

Spradlin v. Royall Mfg. Co. (C. C. A. 4), 73 F. (2d) 776;

Utter v. Eckerson, 78 F. (2d) 307;

Harrell v. Lawhead (D. C., N. D., W. Va.), 13 F. Supp. 298;

Phelps v. Citizens Union Nat'l. Bank (D. C., W. D. Ky.), 13 F. Supp. 623;

Calcasieu Nat'l. Bank v. Bank of Abbeville & Trust Co. (C. C. A. 5), 83 F. (2d) 742;

City of Marion v. Sneeden, 291 U. S. 262, 78 L. Ed. 787;

Faircloth v. Atlantic City (D. C., N. D., N. J.), 16 F. Supp. 131;

O'Conner v. Rhodes (Ct. of App., D. C.), 79 F. (2d) 146,

have no direct application, because the amendment conferred no new authority; and had the Courts given effect to the intention of the parties, the result would have been to allow the parties to do indirectly that which *at no time* could be done directly.

Cases such as

Mays v. Board of County Comm'rs. Creek County (*Okla.*), 23 Pac. (2d) 664;

Mays v. Wilkinson, 12 F. Supp. 350;

Ross v. Lee (D. C., S. D. Fla.), 15 F. Supp. 972,

have no direct application, because insolvency had supervened prior to June 25, 1930, and the rights of the parties had become fixed before the amendment.

Cases such as

F. & D. Co. v. Kokrda (C. C. A. 10), 66 F. (2d) 641;

Haynes v. City of Woodward (D. C., W. D. Okla.), 6 F. Supp. 270;

Lewis v. Fidelity & Deposit Co., 292 U. S. 559, 78 L. Ed. 1425;

Collins v. School Dist. of Borough of Trafford (C. C. A. 3), 72 F. (2d) 339;

Kavanaugh v. Fash (C. C. A. 10), 74 F. (2d) 485;

Hellawell v. Town of Hempstead (D. C., E. D. N. Y.), 10 F. Supp. 771;

Standard Inv. Co. v. Town of Snow Hill (C. C. A. 4), 78 F. (2d) 33,

while not all precisely in point, are helpful in their analyses.

The *Lewis* case went further than it was necessary to go in this case, for: the bond required of National banks was double that required of State banks; the lien allowed to be enforced was general, and not limited to specific assets; it attached not only to assets owned at the time of the deposits, but to after-acquired assets, including those captured upon insolvency by the receivership; it was in form security for the bond, and not for the deposits made; it was allowed against assets in the hands of the Receiver; and not, as here, against assets in the actual or constructive possession of the public authorities. *Furthermore, the right in that case asserted was* one arising by assignment and subrogation after the surety had paid the public authorities and had taken an assignment of their rights, which it was asserting.

The similarity of the *Lewis* case and this is striking. In both the lien was contractual, and did not arise *proprio vigore* any statute. The arrangement between the parties originally could not be given effect in its entirety, solely because of the obstacle of the paramount Federal law. The lien in the *Lewis* case could arise only upon the giving of bond; that in this case, only upon the making of deposit. But the only bond given was in 1928. If not necessary to execute a new bond in that case, it was similarly unnecessary to go through the form of

withdrawing and redepositing the unpaid balances of deposits and of redelivering the collateral in this. In neither case was retroactive construction necessary; because insolvency occurred only after June 25, 1930. No rights of third parties having in the meantime vested, the intention of the parties could be given effect from and after June 25, 1930. In the *Lewis* case, though the moneys in question had been deposited *after* the amendment, the lien was allowed priority *from the date thereof.* In neither case was the relationship a closed transaction with the making of original deposits; in both instances it was contemplated that there would be continuous dealings so long as, and to the extent that, balances should remain on deposit, the lien to be measured by unpaid balances from time to time on deposit with the bank. In each case there was a continuing intention that security exist; and in each the Court gave effect to the intenton as soon as that could be done consistent with paramount Federal law.

Though in the *Lewis* case, the deposits involved were made after the amendment, the lien was allowed effect from the date of the amendment. The question reserved was as to whether a lien had also existed as to the deposits made before the amendment. This question is not involved here, but would be involved if it were attempted to assert that any lien had existed before June 25, 1930.

It was not necessary to go through useless formality.

Ewell v. Daggs, 108 U. S. 143, 27 L. Ed. 682.

Respondents had acted in good faith, had been misled by prior administrative rulings of the Comptrollers of the Currency, and did nothing with fraudulent intent, or in contemplation of insolvency. Public officials are presumed, absent a showing to the contrary, to perform

their duties under the law. The legislatively established public policy of the State of Florida required the Treasurer to exact security. The bank enjoyed power to give it after June 25, 1930.

It could make no difference that some of the collateral for convenience of handling was redelivered to and held segregated by the bank. Respondents still held constructive possession and the right to actual possession.

Clark v. Iselin, 21 Wall. 360, 22 L. Ed. 568.

In this situation, respondents were continued in the possession, either actual or constructive, of the collateral, and allowed to think they were secured. If, having the power, the bank did not wish the collateral to be impressed with a lien, it was its duty, in equity and conscience, to advise the respondents, so that the deposits might be withdrawn, as the Court must surely have presumed that they would have been, because of the presumption above referred to, as to the performance of legal duties by public officials.

> "The laws governing the operation and management of banks ought not to be construed to show a greater solicitude for the protection of general depositors in a bank than in the protection of trust funds * * * deposited with the bank, which in fact are the funds of the taxpayers, assessed and collected for a public purpose * * *."
>
> *Haynes v. U. S. F. & G. Co.* (D. C., W. D. Okla.), 6 F. Supp. 272.

Under the circumstances, respondents had certainly acquired rights prior to the insolvency of the bank. The Receiver took the assets subject to liens, equities, or rights arising by express agreement, or implied from